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No. 90-323

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

CARRIERS CONTAINER COUNCIL, INC.,
Petitioner,

vs.

MOBILE STEAMSHIP ASSOCIATION, INC., INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO PENSION PLAN AND TRUST, *et al.*,
Respondents.

CARRIERS CONTAINER COUNCIL, INC.,
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vs.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF OF INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO AS *AMICUS CURIAE* IN SUPPORT OF THE PETITION

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Pursuant to Rule 37.2 of the rules of this Court the International Longshoremen's Association, AFL-CIO ("ILA") respectfully moves this Court for leave to file the accompanying brief

amicus curiae in support of the petition for a writ of certiorari to the Court of Appeals for the Eleventh Circuit.

The ILA has sought but has been unable to obtain the consent of all parties in the court of appeals. All respondents have refused to consent.

The ILA acts as the collective bargaining representative for longshoremen and related waterfront employees in the negotiation and administration of labor contracts in 36 ports from Maine to Texas, including the contracts that form the basis for the instant action. The decision for which the petition seeks Supreme Court review deals with two issues that arise out of ILA collective bargaining agreements and related agreements.

One centers on the authority of the district court to rewrite the parties' collective bargaining agreement so as to impose an obligation on Petitioner Carriers Container Council, Inc., ("CCC") to pay approximately $20 million to longshore employee benefit plans in the ports of Philadelphia and Mobile. These plans claim that they are entitled to "surplus funds" collected pursuant to various Job Security Program ("JSP") Agreements entered into between the ILA and the vessel carriers.

The second concerns the holding of the lower courts that CCC was an employer within the meaning of the Multiemployer Pension Plan Amendments Act of 1980, 29 U.S.C.A. §§ 1381-1405 (West 1985), liable to the local Mobile Steamship Association, Inc.-ILA Pension Plan for withdrawal liability, notwithstanding the fact that the JSP Agreement with the ILA expressly disclaims any promise by CCC to provide pension benefits.

As a party to these various agreements, the ILA was granted permission to intervene as of right in one of the district court cases which gave rise to the decision for which review is sought. The ILA was also granted leave to file a brief *amicus curiae* to the court of appeals.

Due to its direct participation and overall responsibility in negotiating and implementing the JSP Agreements, the ILA has

a direct interest in the issues involved in this proceeding. This case has a material bearing upon the collective bargaining relationships in the longshore industry. The decision of the court of appeals threatens to undermine the ability of the ILA to negotiate innovative methods to protect the job security of its members. Employers will be reluctant to agree to enter into programs with the ILA, if a court can later rewrite the agreement to impose additional terms never contemplated by the union or the employers. In addition, if undertakings to guarantee the financial soundness of pension funds are going to be the vehicle for imposing withdrawal liability upon entities which never had an obligation to furnish pension benefits, the chilling effect upon such agreements is self evident. The repercussions of the decision below will be felt along the entire East and Gulf Coasts and will affect thousands of longshoremen.

Accordingly, the ILA requests that the Court grant its motion to appear as *amicus curiae* and to accept the attached brief intended to assist the Court in reaching its resolution of whether to grant a writ of certiorari.

Dated: New York, New York
September 18, 1990

Respectfully submitted,

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QUESTIONS PRESENTED

1. Did the court of appeals disregard the precedents of this Court by upholding a $20 million grant of summary judgment against Carriers Container Council, Inc. ("CCC") when, having determined that the labor contract (the JSP Agreement) was ambiguous, it refused to reverse the lower court and to remand the case for trial to resolve the ambiguities which raised genuine, disputed issues of material fact?

2. Did the court below err by failing to give deference to the findings of both the U.S. Departments of Labor and Treasury - the agencies entrusted by Congress with administering the Employee Retirement Income Security Act of 1974 ("ERISA") - that CCC could return surplus funds collected under the JSP Agreement to its steamship carrier members without violating the non-reversion provisions of ERISA, since CCC was determined by both agencies not to be an employee benefit plan subject to ERISA?

3. Did the court of appeals misconstrue the Multiemployer Pension Plan Amendments Act of 1980 ("MPPAA") by holding that CCC was an "employer" liable for withdrawal liability based on amounts paid by CCC under the JSP Agreement to the Mobile Pension Plan, where the JSP Agreement contains an explicit disclaimer of any promise by CCC to provide pension benefits and MPPAA imposes withdrawal liability only where such a promise of benefits is made?

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BRIEF OF INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, AS *AMICUS CURIAE* IN SUPPORT OF THE PETITION

The International Longshoremen's Association, AFL-CIO, ("ILA") files this brief *amicus curiae* contingent upon the granting of the foregoing motion for leave to file said brief. The interest of the *amicus curiae* is stated in the motion.

STATEMENT OF THE CASE

The petition seeks a writ of certiorari to the Court of Appeals for the Eleventh Circuit to review its decision on a consolidated appeal from two decisions of the District Court of the Southern District of Alabama. Both cases arose out of collective bargaining agreements and related agreements between *Amicus* ILA and Petitioner Carriers Container Council, Inc. ("CCC"). These agreements established a Job Security Program ("JSP") to maintain and guarantee the financial soundness of management-ILA fringe benefit funds in 36 ports from Maine to Texas.

Historical Setting of JSP

The JSP was established in 1977 to break an impasse in coastwide collective bargaining negotiations which resulted in a 57 day strike against container carriers in ports on the East and Gulf coasts. Containerization had been the chief problem in longshore negotiations for two decades giving rise to lengthy strikes in 1959, 1962, 1964, 1969, 1971, as well as in 1977. In 1976 the National Labor Relations Board had held that the Rules on Containers, work preservation provisions designed to retain work for longshoremen in the face of the new technology, violated national labor law. *International Longshoremen's Association, (Consolidated Express, Inc.)*, 221 N.L.R.B. 956 (1975), *enforced*, 537 F.2d 706 (2d Cir. 1976), *cert. denied*, 429 U.S. 1041 (1977), *vacated and remanded*, No. 75-4266 (2d Cir. Oct. 1, 1980). With the invalidation of the Rules, job security took on a heightened importance, and the 1977 strike was precipitated.

JSP arose from the inability of local employer associations, whose membership was composed of stevedores in the individual ports, to deal with the ILA's demand for protection for longshore employee benefit plans from the effects of declining contribution levels caused by the decisions of vessel carriers to by-pass ports at which their vessels had traditionally called. Containerization enabled carriers to concentrate their vessels at load center ports from which the containers could be trucked or railroaded to other port areas. The elimination of vessel calls

at the abandoned ports would diminish the hours of work performed by ILA longshore employees as well as the man-hour contributions payable to their pension and other fringe benefit plans.

The impasse was finally broken when an ad hoc group of vessel carriers negotiated directly with the ILA. None of the local port associations were parties to that agreement. The stumbling block was removed, and on the very same day that the 1977 JSP Agreement was reached the strike ended and a coastwide Master Contract was concluded.

The JSP Program was an integral part of East and Gulf coast longshore collective bargaining for the next 9 years. In 1980, 1983, and 1986 longshore contracts were concluded without strikes. In 1980 this Court vacated the NLRB's invalidation of the Rules on Containers, *NLRB v. International Longshoremen's Association*, 447 U.S. 490 (1980) ("*ILA I*"), and subsequently in 1985 held that these Rules were lawful work preservation provisions under federal labor law. *NLRB v. International Longshoremen's Association*, 473 U.S. 61 (1985) ("*ILA II*"). In 1988, however, the Federal Maritime Commission held that the Rules violated federal shipping law. "*50 Mile Container Rules*" *- Implementation by Ocean Common Carriers Serving U.S. Atlantic and Gulf Coast Ports*, 24 Shipping Reg. (P&F) 411 (1987), *petitions for review denied, New York Shipping Association, Inc. v. Federal Maritime Com'n*, 854 F.2d 1338 (D.C. Cir. 1988), *cert. denied*, ____ U.S. ____, 109 S.Ct. 866 (1989). With the elimination of what had been the heart of their collective bargaining agreement for over 20 years, management and the ILA were unable to reach an accord by the time their 1986-89 collective bargaining agreement expired. To avoid labor strife the parties have been operating under the 1986-89 contract as extended to November 30, 1990.

For the first time since 1977 there are no work preservation provisions to ameliorate the effects of technology. Job security, therefore, looms as an even more important subject of bargaining. But over the negotiations, with their hope for continued labor peace, the history and aftermath of the JSP Program casts it pall.

Structure of JSP

The essence of the JSP Program was the carriers' undertaking to protect local pension, welfare and Guaranteed Annual Income plans from shortfalls or deficits in contributions not caused by a strike.[1] The JSP Agreement expressly provides that the carriers promise to protect only shortfalls in contributions in the three plans, not the benefits provided by such plans.

To enable the carriers to put aside sufficient monies to satisfy shortfalls when they might occur, the agreement established a tonnage assessment mechanism. Each subscribing vessel carrier promised to pay an amount per ton on each ton of cargo handled by ILA-represented longshoremen in the ports covered by the agreement. The amount of the assessment rate was variable and was to be calculated so as to meet the needs of JSP. The assessment rate was determined each quarter by estimating the total obligations for shortfalls incurred to date. It was agreed that the assessment would be increased, decreased or suspended, depending upon experience.

During the life of the JSP Program, tonnage assessments were collected and shortfall payments were made in each of the three-year contract periods. In each period assessment collections exceeded shortfall payments. At the end of each period, the surplus on hand was carried forward and taken into account in fixing the assessment rate for the succeeding period.

The Aftermath of JSP

Except for the purpose of meeting any surviving obligations under the existing agreement, the JSP Program was terminated by the 1986 CCC-ILA Master Contract, which provided that "Any surplus, after all such obligations have been satisfied, shall be discussed with ILA."

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[1] Until it changed its name to Carriers Container Council in 1987, the carrier organization that administered the JSP was known as the Job Security Program Agency or JSPA.

Upon discontinuance CCC had cash on hand totalling approximately $132 million. There existed, however, unresolved filed and anticipated shortfall claims exceeding that amount. Disposition of these claims was worked out by CCC and the ILA in the discussions contemplated by the 1986 Master Contract. On May 24, 1988, the parties reached a settlement agreement that resolved the outstanding filed and expected claims for $75 million. The balance of $57 million was handled in two ways: $37 million was refunded to the carriers on condition that it be used for the payment of prospective contributions to local port plans, and $20 million was retained by CCC for its ongoing collective bargaining activities on behalf of the carriers. The settlement agreement was approved unanimously by the ILA's Executive Board and was accepted by the local plans in every port except Philadelphia and Mobile.

The dissenting plans commenced actions claiming entitlement to a share of the $57 million surplus.[2] The Philadelphia Plans' action was transferred to the Southern District of Alabama and consolidated with an action brought there by the Mobile Plans. The ILA intervened in support of CCC in the Mobile Plan's action ("the surplus case") .

In addition to the surplus case, the Mobile Steamship Association, Inc.-ILA Pension Plan ("Pension Plan") asserted a claim for withdrawal liability pursuant to the Employee Retirement Income Security Act, 29 U.S.C.A. § 1001-1461 (West 1985), ("ERISA") as amended by the Multiemployer Pension Plan Amendments Act of 1980, 29 U.S.C.A. §§ 1381-1405 (West 1985) ("MPPAA") . The Pension Plan contended that the JSP shortfall payments were akin to employer contributions. CCC commenced an action for a declaratory judgment that it was not an employer within the meaning of MPPAA ("the withdrawal liability case").

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[2] The Mobile action was commenced not by the Mobile Plans, but by the Mobile Steamship Association and the stevedoring companies and ILA locals in Mobile. The complaint was later amended to add the plans as plaintiffs.

The Decisions Below

In the surplus case the district court granted summary judgment awarding the Philadelphia Plans $15,276,000 and the Mobile Plans $4,218,000 (App. B at 55a-56a).[3] The court found that the JSP Agreement was ambiguous with respect to the disposition of any surplus monies. (App. B at 48a-50a). By resorting to extrinsic evidence, which consisted mainly of differing characterizations the parties had placed upon the agreement in various out-of-court contexts in the past, the district court resolved the disputed factual issues and granted summary judgment. (App. B at 50a-51a).

On appeal the Eleventh Circuit concurred that the JSP Agreement was ambiguous and sanctioned the lower court's resort to the parties' characterizations, saying

> This language from the agreement, and the parties' characterizations relied on by the district court, support the conclusion that CCC funds were intended to benefit the local port plans only and should not be returned to the carriers.

(App. A at 15a).[4]

When on petition for rehearing it was pointed out to the court of appeals that the district court had found that parties' characterizations of the JSP Agreement were conflicted, *See* App. B at 50a, and that this created an issue of fact, the Eleventh Circuit modified its earlier holding. It deleted the reference to the parties' characterizations and relied solely on "language from the agreement." *See* App. E at 87a. The circuit court did not, however, change the portion of its opinion where it both agreed that the contract was ambiguous and sanctioned the resort to

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[3] References are to the Appendices filed with the Petition.

[4] At the same time, the court of appeals reversed and remanded the issue of damages, finding that a similar question, the characterization of the 1988 Settlement Agreement, presented a genuine issue of material fact requiring a trial.

"parol evidence in order to discern the parties' original intent as to the disposition of surplus funds." *See* App. A at 13a. Nor did the appellate court explain how the band-aid it applied to its opinion would cure the district court's decision, which the circuit had recognized turned on the extrinsic evidence. *See* App. A at 6a, 13a.

In the withdrawal liability case the district court held that CCC was an employer obligated to contribute to the Mobile-ILA Pension Plan and subject to withdrawal liability upon the cessation of that obligation. (App. C at 73a). The court of appeals found that the argument that the JSP Agreement disclaimed any promise by CCC to provide pension benefits was without merit. (App. A at 23a).

SUMMARY OF ARGUMENT

Notwithstanding the prospective monetary loss to its locals' funds if the decision below is reversed, the *amicus* union urges the Supreme Court to exercise its power to supervise the lower federal courts to review that decision. The Eleventh Circuit clearly erred in sanctioning the district court's grant of summary judgment in a case where both courts recognized that there was an issue of material fact. Unless this error is corrected, it will have an adverse effect on collective bargaining negotiations presently under way in a major industry and have a chilling effect on employers' willingness to enter into arrangements to provide job security and guarantee fund benefits.

Similarly, the overly expansive interpretation by the court of appeals of the definition of employer in the withdrawal liability case can only produce results contrary to the will of Congress. Both decisions, while advancing ephemeral local interests, will act as deterrents to employers entering into innovative programs to afford job security and the protection of fund benefits. The Supreme Court should exercise its power to interpret an important federal statute so as to prevent the undermining of congressional purposes.

REASONS FOR GRANTING THE WRIT

The Court may think it odd that a union whose locals' funds have just had their coffers swelled by $20 million or so is here joining in an effort to have that result overturned. Unions are not wont to forego their employers' money. That the ILA is seeking review and reversal shows how dangerous the union considers the Eleventh Circuit's decision and highlights why Supreme Court review is necessary.

1. The Eleventh Circuit's Departure From the Accepted and Usual Course of Judicial Proceedings in the Surplus Case is an Impediment to Collective Bargaining and to the Protection of Workers' Job Security

The error of the court of appeals was gross and palpable. It permitted the entry of summary judgment where both it and the lower court had found there was a question of fact.[5] This patently disregards the most basic law with respect to summary judgment. *See* Fed. R. Civ. P. 56; *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970); *First National Bank v. Pursue Energy Corp.*, 799 F.2d 149, 151 (5th Cir. 1986); *Orkin Exterminating Co., Inc. v. F.T.C.*, 849 F.2d 1354, 1360 (11th Cir. 1988), *cert. denied*, ____ U.S. ____, 109 S.Ct. 865 (1989). The Eleventh Circuit's cosmetic tinkering with its decision to delete the reference to extrinsic evidence does not change the realities. The district court did rely on extrinsic evidence as the basis for its decision, not on the agreement alone. Without explanation the agreement is silent with respect to surplus. The revised decision of the court of appeals, which would suggest that the JSP Agreement alone is support for the district court's decision, is manifestly wrong. Indeed, the Eleventh Circuit's revision serves only to underline its error.

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[5] CCC had argued that the JSP Agreement on its face showed that any surplus monies belonged to the carriers. The rejection of this argument by the courts below, as they both realized, created a lacuna or ambiguity in the agreement with respect to the disposition of the surplus, which permitted extrinsic evidence to be considered.

The fact that the court of appeals made a jurisprudential blunder, however, is not reason for this Court to grant certiorari. The court below did not enunciate any erroneous legal principle that is likely to pollute the law. Its error is so basic that it is unlikely to be followed by any court. But the Eleventh Circuit's departure from the accepted course of judicial proceedings and the conflict with applicable decisions of this Court does give this Court the opportunity to review.[6] *See* Supreme Court Rules 10.1(a) and 10.1(c). The Court should take advantage of that opportunity because of the setting in which the error was committed and the effect it will have in a vital area of national concern.

JSP was a collectively bargained response to the problems of automation and job security. For almost a decade it contributed to labor peace in a volatile industry. Some similar arrangement will be needed in the future. However, the fact that management finds itself paying a $20 million surcharge over and above what it had promised[7] because the Eleventh Circuit sanctioned the district court's departure and itself departed from basic rules of judicial procedure, bodes ill for the success of negotiations.

If management gets the message — and in this case it has been trumpeted loud and clear — that the usual rules of judicial procedure will be dispensed with for the benefit of local interests

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[6] Indeed, the circuit court's error is so clear cut that, should this Court believe the case is not worthy of plenary review, it could grant the petition and summarily reverse and remand the case for trial. *See* Supreme Court Rule 16.1.

[7] Under the JSP Agreement, the carriers' promise was not to provide benefits under the various local plans but to guarantee against deficits, or shortfalls, due to a fall off in economic activity. The assessment which created the surplus was merely an administrative device to make sure that there were funds on hand when shortfalls occurred. If shortfalls could have been predicted exactly, the assessment and the deficits would have coincided perfectly, and there would have been no surplus. If the carriers had opted not to assess in advance but to await a shortfall and then assess members whatever was necessary, there would again have been no shortfall. But in each instance the carriers would have fully discharged their obligation under the JSP Agreement.

and that appellate courts will not correct the abuse, employers can not be blamed for being wary. Here they believed that what was promised was apparent from their contract. If it was not, they would expect at least their day in court to explain what they had meant to agree to. They did not expect the district court to piece together their intention on the basis of theories proposed by non-parties to the contract from selected snippets of evidence that arose in other contexts. *See* App. B at 13a-15a. If management cannot rely on the courts to afford this minimal due process, the solution is self-evident. In the future management must not put its neck on the block.

Negotiations in the longshore industry on the East and Gulf Coasts have already extended almost a year beyond the expiration date of the 1986-89 collective bargaining agreement.[8] The issues of job security and the protection of fringe benefits are still at the heart of the problem. If the matter of the JSP aftermath is not put right, negotiations will be made all the more difficult, and the likelihood of labor strife in an industry vital to the national economy becomes all the more probable.

Nor are the effects of the Eleventh Circuit's sanctioning of error limited to the longshore industry. The members of CCC who were denied their day in court in Mobile also bargain with other unions in the conduct of their operations. And it is only a matter of time before the word spreads to other industries.

What is at stake, then, is the congressional policy that management and labor hammer out the solutions to problems of technology and job security. *See International Longshoremen's Association v. NLRB*, 613 F.2d 890, 914 (D.C. Cir. 1979), *aff'd*, 447 U.S. 490 (1980). That task is hard enough in itself. It will become well-nigh impossible if the parties can not rely on the courts for the equal-handed and sound administration of justice. In the interests of labor peace, then, this Court, as supervisor of the federal court system, should grant review to correct the Eleventh Circuit's blatant departure from hornbook law on summary judgment.

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[8] Since 1986 it is CCC, the carrier organization, that the ILA has bargained with for a coastwide Master Contract.

2. The Decision in the Withdrawal Liability Case Presents an Important Question of Federal Law Affecting Pension Plans throughout the Economy, Which Should Be Decided by the Supreme Court

The Eleventh Circuit's error in the withdrawal liability case is not self-evident, as it is in the surplus case. However, the withdrawal liability part of the decision involves interpretation of an important federal statute. As with the surplus case, the decision of the court of appeals will have a profound effect on collective bargaining in the longshore industry and beyond, and that effect will be contrary to the intent of Congress as expressed in ERISA and MPPAA.

Once again this Court is confronted with the anomalous situation of a union turning down substantial monies for one of its funds. One would expect that a union would opt for as broad an interpretation of "employer" as possible.[9] Ordinarily that is true, but when the definition is more expansive than the language and the purposes of the statute permit, as is the case with the Eleventh Circuit's decision, it becomes counterproductive in the real world of collective bargaining to both the interests of labor and the purposes of Congress.

By holding that CCC's obligation under the JSP Agreement to make up shortfalls to local plans was an obligation to contribute under those plans, the court of appeals broadened the statutory definition to include entities never contemplated by Congress. The rationale for withdrawal liability is an employer's promise to provide pension benefits and a failure to fund those

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[9] It was an ILA pension plan that successfully urged to the Second Circuit the "contributing obligor" definition of employer relied on by the Eleventh Circuit in this case. *See Korea Shipping Corp. v. New York Shipping Ass'n-International Longshoremen's Ass'n Pension Trust Fund*, 880 F.2d 1531 (2d Cir. 1989); App. A at 20a-22a. *Amicus* still believes that that definition is correct, but here it has been misapplied to include entities who, although they may be said to "contribute" to make up shortfalls, are not obligated to provide pension benefits.

benefits. *See Nachman Corp. v. Pension Ben. Guaranty Corp.*, 446 U.S. 359, 360, n.5 (1980). Here, CCC expressly disclaimed any promise to provide benefits. Its sole obligation was simply to make up for shortfalls in expected contributions from employers that did promise benefits.[10]

Under the Eleventh Circuit's holding, carriers have been held liable for withdrawing from a plan to which they were never members. The Pension Plan's agreement, records and financial statements did not include CCC as a contributing employer. To interpret MPPAA so as to impose withdrawal liability on CCC raises grave doubts as to the constitutionality of the statute in these circumstances.[11] *See Connolly v. Pension Ben. Guaranty Corp.*, 475 U.S. 211, 227, 229-30 (O'Connor, J., concurring) (1986).

The purposes of Congress in enacting ERISA and MPPAA were both to protect the benefits promised under multiemployer pension plans and also to encourage the establishment and continuation of such plans. *T.I.M.E.-DC v. Management-Labor Welfare and Pension Funds*, 756 F.2d 939, 943 (2d Cir. 1985). The JSP was an innovative attempt to provide job security and to preserve the financial solvency of pension plans. Its ends were thus congruent with those of the statute. But the program was designed to accomplish these ends without implicating ERISA. It provided a layer of protection in addition to that which Congress had enacted.[12] The Eleventh Circuit's manipulation of

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[10] It should be noted that the shortfalls protected by JSP were not as a result of the failure of the regular contributors to make their required contributions but rather of a decline in manhours from a projected target.

[11] Since the carriers' obligation under the JSP Agreement was solely to contribute an amount calculable from any shortfall, and not to provide benefits, the correct analogy insofar as those carriers are concerned is to a defined *contribution*, not a defined *benefits*, plan. *Compare* ERISA §3(34) and §3(35), 29 U.S.C.A. § 1002(34) and §1002(35).

[12] The need for this kind of collectively bargained and self-imposed protection is manifest. Withdrawal liability is a valiant effort toward the same end, but all too often the withdrawal is due to an employer's financial insolvency, and the liability is never collected.

statutory concepts to come up with an overly expansive definition of withdrawing employer can only deter such efforts in the future and frustrate the ends of ERISA and MPPAA.

* * *

Both the surplus and the withdrawal liability parts of the Eleventh Circuit's decision, while they have a superficial consonance with the purposes of Congress, are in the long run antagonistic to those purposes and to the national welfare. Arising as it does at a time of sensitive collective bargaining negotiations, the decision bodes for immediate disastrous effects in an industry vital to the national economy. Its long range effects will be more widespread but no less deleterious.

The decision below seems to confer substantial benefits upon local fringe benefit plans, their beneficiaries, and their contributing employers. That view is decidedly shortsighted and parochial. For that reason, this union will not permit its appetite for goose to induce it to destroy the supply of golden eggs far into the future. Since the union's purposes are identical to what Congress has declared to be national policy, this Court should exercise its powers to supervise federal procedure and to interpret federal statutes and should review the decision of the Eleventh Circuit.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Dated: September 18, 1990

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